

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,  
Plaintiff,

v.

JOSE L. DIAZ- FONTANEZ  
Defendant

CRIMINAL NO. 97-0071 (PG)

**MOTION REQUESTING LEAVE TO WITHDRAW**

**TO THE HONORABLE JUAN M. PEREZ GIMENEZ  
UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF PUERTO RICO**

**TO THE HONORABLE COURT:**

**COMES NOW** defendant Jose L. Diaz-Fontanez represented by the Federal Public Defender and before this Honorable Court respectfully states and prays as follows:

On December 29, 2005, the First Circuit Court of Appeals vacated the sentence imposed on defendant Jose L. Diaz-Fontanez and remanded for further proceedings. On April 18, 2006, this Court appointed the Federal Public Defender to represent the defendant during re-sentencing proceedings.

On April 24, 2006, AUSA Jacabed Rodriguez-Coss informed this office that she had acted as prosecutor in the original case and remembered that the Federal Public Defender had represented material witness William Acevedo-Rodriguez, who had provided information leading to defendant Diaz-Fontanez' conviction. This office has reviewed its

97-0071 (PG)

Page 2

records and has found that it did in fact represent material witness William Acevedo-Rodriguez.

“Where a constitutional right to counsel exists, [the Supreme Court’s ] ....Sixth Amendment cases hold that there is a correlative right to representation that is free from conflicts of interest.” *Wood v. Georgia*, 450 U.S. 261, 271 (1981). “Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises...” *Cuyler v. Sullivan*, 446 U.S. 335 (1980) A conflict of interest exists when defense counsel places himself in a position conducive to divided loyalties.” *United States v. Carpenter*, 769 F.2d 258 (5<sup>th</sup> Cir.1985).

For these reasons , it is respectfully requested that the Federal Public Defender be granted leave to withdraw as counsel of defendant Jose L. Diaz-Fontanez.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 26<sup>th</sup> day of April, 2006

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of this motion was or will be delivered to the Office of the United States Attorney (Attn: Jacobed Rodriguez-Coss), Torre Chardon, Suite 1201, 350 Carlos Chardon Street, San Juan, Puerto Rico. In San Juan, Puerto Rico, on this 26<sup>th</sup> day of April of 2006.

S/ Joseph C. Laws, Jr.  
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97-0071 (PG)  
Page 3